IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE FIFTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

WRIT PETITION NO : 11237 of 2004

Between:

Sri. K. Harindra Reddy, S/o. K. Muni Reddy,
R/o. Big Mosque Street, Sri Kalahasti, Chittoor district.

..... PETITIONER

AND

1 The District Co-operative Officer, Chittoor District.
2 The Person-in-Charge, Kovvunoor PACS, K.V.B. Puram Mandal, Chittoor District.
3 The Person-in-Charge, Piler Primary Agricultural Co-Operative Society, piler Mandal, Chittoor District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ order or direction one in the nature of Writ of Mandamus to declaring the action of 3rd respondent in issuing the notice dated 12-1-2004 is illegal, arbitrary and contrary to the provisions of the APCS Act, 1964 and consequently direct the II respondent to continue the petitioner in service forthwith.

Counsel for the Petitioner:MR.V.S.K.RAMA RAO

Counsel for the Respondent No.1 : GP FOR COOPERATION

Counsel for respondent No.2: Mr.P.M.Gopal Rao, Advocate.

Counsel for respondent No.3: Sri M.Aravindu.

The Court made the following :

O R D E R:

The facts of the case in brief are that on 13.09.1997 the petitioner was appointed as Paid Secretary in the 2nd respondent Kovvunoor P.A.C.S., Chittor District. On 14.10.1991 the Government issued a Memo No.5661/11/2/91-1, extending salaries of the employees working in the Society, on par with Category No.V employees working in the District Co-operative Central Bank. Thereafter, the Commissioner issued proceedings, dated 14.02.1992 informing all the concerned authorities of the Society to stop the implementation of the Memo, dated 14.10.1991. Challenging the same, the employees Union of Paid Secretaries filed W.P.NO.16558 of 1992 and batch before this Court and a Division Bench of this Court initially granted interim orders by order, dated 13.08.1996 and subsequently disposed of the said writ petition directing the State Government officials to constitute a Committee to consider the issue relating to the pay scales of Paid Secretaries. As per the directions of this Court, dated 13.08.1996, the petitioner is drawing the salary as fixed by the Government, vide Memo, dated 14.10.1991, on par with Category No.V of the employees of the District Co-operative Central Bank. In the year 2001, the Government has amended Section 116-C of Act 22 of 2001 of the Act. Aggrieved by the same, the Employees' Union filed W.P.No.8522 of 2003, stating that the

respondents have no right to recover the salaries, which were already paid to the Paid Secretaries, but the same was dismissed by a Division Bench of this Court, holding that the emoluments of pay scales and allowances of the employees, which are to be paid by the Societies have to be fixed in respect of the employees by the concerned Society, keeping it open for the aggrieved employees to raise a dispute with regard to the quantum of amount. There after, a Person-in-Charge was appointed to manage the affairs of the Society, but the 2nd respondent-Person-in-charge stopped the payment of salaries to the petitioner from 2003 onwards and not allowing the petitioner to continue in service as Paid Secretary, on the ground that the 3rd respondent has already issued notice to the petitioner, dated 12.01.2004, stating that as per the audit report Nos.396/86-87 and 298/87, certain amounts are due from the petitioner. The petitioner now questions the said notice, dated 12.01.2004 issued by the 3rd respondent Society, wherein, the petitioner was directed to pay an amount of Rs.1,65,949.51ps., along with interest at the rate or 18% per annum and other costs from the date of utilisation of funds, towards the excess salary till the date of realization, within a period of 15 days from the date of receipt of the said notice.

In the counter filed by the 2nd respondent it is stated that the petitioner has misappropriated the funds of the 3rd respondent Society to a tune of Rs.2,90,580-11ps. As per the powers vested under Section 59 of the Act, the Divisional Co-operative Officer, Tirupathi vide proceedings in Rc.NO.17/2003-C, dated 16.01.2003, instructed the 2nd respondent to keep the petitioner under suspension. Accordingly, the 2nd respondent issued suspension orders, dated 28.06.2004 to the petitioner, asking him to handover relevant records to the Supervisor of Kovvunur Primary Agricultural Co-operative Society. Instead of handing over the relevant records, the petitioner has absconded from service.

A perusal of the said notice, dated 12.01.2004 issued by the 3rd respondent discloses that as per the Final Audit Report Nos.369/86-87 and 298/87-86, an amount of Rs.2,90,580.11ps. was due from the petitioner, for the years 1986-87 & 1987-88. It is further seen from the notice that in a meeting held by the Divisional Co-operative Officer, Tirupati, the petitioner agreed to pay an amount Rs.1,24,630.60 ps. For the recovery of the balance amount of Rs.1,65,949-51 ps., only, the notice, dated 12.01.2004 has been issued by the 3rd respondent Society.

The learned counsel appearing for the petitioner submits that though initially the petitioner has agreed to repay an amount of Rs.1,24,630.60 only, now he has agreed to repay the balance amount to the Society.

The learned counsel appearing for the respondents submits that as the petitioner has misappropriated the funds of the 3rd respondent Society to a tune of Rs.2,90,580-11ps., and failed to submit the relevant account books to the Supervisor of Kovvur PACS, suspension orders were issued to the petitioner on the instructions of the Deputy Registrar of Co-operative Societies, Tirupathi. Therefore, there is no illegality on the part of the respondent authorities in issuing the notice.

The only criteria to fix up the pay and allowances in respect of employees of the Society is in accordance with Section 116-C of the Andhra Pradesh Co-operative Societies Act, read with Rule 28(4) & 36-B of the Rules.

The notice, dated 12.01.2004, which was issued by the 3rd respondent alone was questioned in the present writ petition. The disputed question of fact as to whether the petitioner is liable to pay only Rs.1,65,948-51 ps., or Rs.1,24,35/-, has to be decided between the petitioner and respondent Nos.2 and 3. On an earlier occasion this Court took a view that the disputed questions of facts cannot be decided in a writ petition and no writ lies against the employees of a Primary Agricultural Co-operative Society, for the non-statutory actions exercised by the Primary Agricultural

Cooperative Societies.

The writ petition is accordingly dismissed keeping it open to avoid alternative remedy. No costs.

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V.ESWARAIAH.J

05.11.2004

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ASSISTANT REGISTRAR

To

1. The District Co-operative Officer, Chittor District.

2 The Person-in-Charge, Kovvunur PACS, K.V.B.Puram Mandal, Chittor District.

3 The Person-in-Charge, Piler Primary Agricultural Co-operative Society, Piler Mandal, Chittor District

4. 2CCs to the G.P. for Co-operation, High Court of A.P., Hyderabad. (OUT)

3. 2 C.D.Copies.